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(202) 551-1724
johngriffithjohnson@paulhastings.com

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Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 Twelfth Street, Southwest
Washington, D.C. 20554

In re: **MB Docket No. 09-182** (Media Bureau Workshops on Structuring the Commission's 2010 Media Ownership Review Proceeding); Comments of Arbitron Inc.

Dear Madame Secretary:

On behalf of our client, Arbitron Inc. ("Arbitron"), we respectfully submit herewith these comments in response to the Commission's *Public Notice*, DA 09-2209, released October 21, 2009, *Media Bureau Announces Agenda and Participants for Initial Media Ownership Workshops and Seeks Comments on Structuring of the 2010 Media Ownership Review Proceeding*, 24 FCC Rcd. ____ (the "Public Notice").

Specifically, we here address certain remarks made in his opening statement by James L. Winston, the Executive Director and General Counsel of the National Association of Black Owned Broadcasters ("NABOB") at the workshop held on November 4, 2009 pursuant to the *Public Notice*. In his remarks, Mr. Winston alluded to the Commission's proceeding in MB Docket No. 08-187, *Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters*, Notice of Inquiry, FCC 09-43, adopted May 15, 2009 and released May 18, 2009, 24 FCC Rcd. 6141, 2009 WL 1373002, 74 Fed. Reg. 26,235 (published June 1, 2009).

Mr. Winston castigated Arbitron's Portable People Meter TM ("PPM" TM) service, which utilizes 21st-century electronics to record panelist exposure to radio station signals and has been widely praised by both broadcasters (including the largest African-American-owned radio broadcasting company in the United States) and advertising agencies for providing the industry with data on radio consumer behavior that is more timely, more accountable, more detailed, and more granular than the data produced by the pen-and-

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paper diary method for panelist self-reporting of their listening habits.¹ Mr. Winston, in his appearance on the media ownership rule review proceeding panel on November 4th, specifically stated that "... NABOB and the PPM Coalition have demonstrated that the PPM methodology discriminates against stations serving minority audiences, particularly young minority audiences."

In point of fact, comments in MB Docket No. 08-187 offer extensive examples that directly contradict Mr. Winston's *ipse dixit*.² The numerous and complicated questions surrounding the PPM service – including the threshold question regarding limits on the Commission's jurisdiction over Arbitron and the PPM service – are the subjects of a voluminous record compiled to date in MB Docket No. 08-187. Should the Commission desire to import the various controversies in MB Docket No. 08-187 into the present proceeding in MB Docket No. 09-182, Arbitron respectfully suggests that the subject at hand – namely, the Congressionally-mandated quadrennial review of the Commission's structural rules governing the ownership of various categories of media of mass communication, information, and entertainment – would be at risk of being diverted into the issues that are being concurrently examined in MB Docket No. 08-187, and that

¹ See, e.g., letter to the Commission's Secretary from Linda J. Vilardo, Chief Administrative Officer, and Michael G. Plantamura, General Counsel, of Radio One, Inc., dated July 30, 2009 and filed with the Commission in MB Docket No. 08-187; letter to the Commission's Secretary from Don Benson, President and Chief Executive Officer of Lincoln Financial Media Company, dated July 30, 2009 and filed with the Commission in MB Docket No. 08-187; letter to the Commission's Secretary from Michael Young, Executive Vice President and Corporate Media Director for Ackerman McQueen, filed with the Commission on July 27, 2009 in MB Docket No. 08-187.

² See, e.g., Reply Comments of Arbitron in MB Docket No. 08-187, filed with the Commission on July 31, 2009, at p. 16, which refers to:

... the experiences of stations in Houston, New York, Los Angeles, Chicago, San Francisco, Detroit, Atlanta, Dallas, Miami, Phoenix, and San Diego – particularly ... stations whose formats are designed to attract Blacks and Hispanics as their listeners – whose ratings and rankings have fluctuated since the advent of the PPM service, with many stations over time regaining or maintaining the audience ratings and market rankings that they had enjoyed under the final diary reports in those markets, and ... numerous such stations actually improving upon their final diary-based ratings and rankings [citing Arbitron's Comments filed in MB Docket No. 08-187 on July 1, 2009, at pp. 32-38].

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that consequence would be a disservice to parties interested in the outcome of each of those proceedings.

However, should the Commission elect to explore the issues surrounding the PPM service in the context of the proceeding in MB Docket No. 09-182, fundamental fairness and a due regard for conducting the proceeding in a manner designed to develop all sides of the controverted issues would require at a minimum that the Commission entertain views that balance those presented by Mr. Winston, and that Arbitron and other parties be given adequate notice of the Commission's election in that regard and a reasonable opportunity to be heard, which was decidedly not the case at the November 4th workshop.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Griffith Johnson, Jr.", with a stylized flourish at the end.

John Griffith Johnson, Jr.
of PAUL, HASTINGS, JANOFSKY & WALKER LLP